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FEDERAL MARITIME COMMISSION

46 CFR Part 532

Non-Vessel-Operating Common Carriers [Negotiated Rate Arrangements](#); Tariff Filing Exemption

Docket No. 11-22

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Maritime Commission is issuing this Notice of Inquiry seeking comments on ways to make the tariff filing exemption provided to licensed non-vessel-operating common carriers in its regulations more useful, including its possible extension to foreign-based non-vessel-operating common carriers not licensed by the Federal Maritime Commission.

DATES: Comments are due on or before March 26, 2012.

ADDRESSES: Submit comments to:

Karen V. Gregory, Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001

or e-mail non-confidential comments to: Secretary@fmc.gov
(e-mail comments as attachments preferably in Microsoft Word or PDF)

FOR FURTHER INFORMATION CONTACT:

Karen V. Gregory, Secretary
Federal Maritime Commission
800 N. Capitol Street, N.W.

Washington, D.C. 20573-0001
(202) 523-5725
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Rebecca A. Fenneman, General Counsel
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SUPPLEMENTARY INFORMATION:

Background:

On July 31, 2008, the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) filed a petition (Petition) with the Federal Maritime Commission (FMC or Commission), seeking an exemption from provisions of the Shipping Act of 1984 (the Act) requiring non-vessel-operating common carriers (NVOCCs) “to publish and/or adhere to rate tariffs for ocean transportation in those instances where they have individually negotiated rates with their shipping customers and memorialized those rates in writing.” NCBFAA Petition at 10. Notice of the Petition was published on August 11, 2008, with comments due by September 26, 2008. Petition No. P1-08, Petition of the National Customs Brokers and Freight Forwarders Association of America, Inc. for Exemption from Mandatory Rate Tariff Publication, 73 FR 46625-02 (August 11, 2008). The Commission considered the petition and comments at a meeting on February 18, 2010, and, by a 3-1 vote, determined to initiate a rulemaking to relieve licensed NVOCCs from the costs and burdens of rate tariff publication. On May 7, 2010, the Commission issued a notice of proposed rulemaking (NPR), pursuant to its authority under sections 16 and 17 of the Act, 46 U.S.C. 40103 and 46 U.S.C. 305, seeking comments on a proposal to exempt licensed NVOCCs from

the rate publication requirements of the Shipping Act, subject to certain conditions.

Docket No. 10-03, 75 FR 25151 (May 7, 2010). Additionally, the Commission requested interested parties to submit comments on whether the exemption should be extended to foreign-based NVOCCs who are unlicensed but bonded pursuant to 46 CFR 515.21(a)(3). On March 2, 2011, after consideration of the comments received in response to the NPR, the Commission issued a final rule, effective April 18, 2011, promulgating 46 CFR Part 532, which exempted licensed NVOCCs from their tariff rate publication obligations when entering into a “negotiated rate arrangement” (NRA).¹

The final rule did not extend the exemption to foreign-based unlicensed NVOCCs due to concerns by Commission Staff that to do so could harm the agency’s mission to protect the shipping public. See 76 FR 11355-11357. The final rule noted that:

At this time, Commissioners hold differing views on the concerns the Staff has raised, and on the relevance and weight those concerns should be given in the Commission’s decision whether or not to extend the exemption to foreign unlicensed NVOCCs. Accordingly, the Commission will move forward with the current rule as proposed for licensed NVOCCs, but as noted above, will commence proceedings to obtain and consider additional public comment on potential modifications to the final rule, including possible extension of the exemption to include foreign unlicensed NVOCCs. The record in this proceeding will be incorporated into the new Commission proceeding. 76 FR 11357.

NVOCCs have now been able to use NRAs for more than six months. In accordance with the statements in the final rule, the Commission now invites comment and

¹ An NRA is defined as “a written and binding arrangement between a shipper and an eligible NVOCC to provide specific transportation service for a stated cargo quantity, from origin to destination, on and after the receipt of the cargo by the carrier or its agent (or the originating carrier in the case of through transportation).” 46 CFR 532.3(a). An NVOCC’s use of NRAs is subject to several conditions, including (1) NVOCCs who use NRAs are required to continue publishing standard rules tariffs containing contractual terms and conditions governing shipments, including any accessorial charges and surcharges, and are required to make their rules tariffs available to shippers free of charge; (2) NRA rates charged by NVOCCs must be mutually agreed and memorialized in writing by the date cargo is received for shipment; and (3) NVOCCs who use NRAs must retain documentation confirming the agreed rate and terms for each shipment for a period of five years, and must make such documentation promptly upon request available to the Commission pursuant to the Commission’s regulations at 46 CFR 515.31(g).

information from all members of the interested public (whether they be located in the United States or elsewhere), including ocean common carriers, ocean transportation intermediaries, exporters, and beneficial cargo owners, on ways to make the exemption more useful, including possible extension of the exemption to include foreign unlicensed NVOCCs. Comments that are specific and provide supporting data are most helpful. The record in Docket 10-03 is incorporated into this proceeding.

Submit Comments:

Non-confidential filings may be submitted in hard copy or by e-mail as an attachment (preferably in Microsoft Word or PDF) addressed to secretary@fmc.gov on or before March 26, 2012. Include in the subject line: “Negotiated Rate Arrangements – Response to NOI.” Confidential filings must be submitted in the traditional manner on paper, rather than by email. Comments submitted that seek confidential treatment must be submitted in hard copy by U.S. mail or courier. Confidential filings must be accompanied by a transmittal letter that identifies the filing as “confidential” and describes the nature and extent of the confidential treatment requested. When submitting comments in response to the Notice of Inquiry that contain confidential information, the confidential copy of the filing must consist of the complete filing and be marked by the filer as “Confidential-Restricted,” with the confidential material clearly marked on each page. When a confidential filing is submitted, an original and one additional copy of the public version of the filing must be submitted. The public version of the filing should exclude confidential materials, and be clearly marked on each affected page, “confidential materials excluded.” The Commission will provide confidential treatment to the extent allowed by law for those submissions, or parts of submissions, for which confidential treatment is requested. Questions regarding filing or

treatment of confidential responses to this Notice of Inquiry should be directed to the Commission's Secretary, Karen V. Gregory, at the telephone number or e-mail provided above.

By the Commission.

Karen V. Gregory
Secretary

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